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Title: PAVEMENT IMPROVEMENTS AT SHELTER ISLAND PARKING LOTS PROJECT:

A. RESOLUTION REJECTING BID PROTEST FROM TC CONSTRUCTION COMPANY, INC. AGAINST MVC ENTERPRISES INC.

B. RESOLUTION REJECTING BID PROTEST FROM EAGLE PAVING COMPANY, INC. AGAINST TC CONSTRUCTION COMPANY, INC.

C. RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AWARDED CONTRACT NO. 2019-15 TO MVC ENTERPRISES INC. IN THE AMOUNT OF \$789,700.00 (BID SCHEDULES A AND B) FOR THE PAVEMENT IMPROVEMENTS AT SHELTER ISLAND PARKING LOTS PROJECT, AS AUTHORIZED BY THE BOARD IN THE FY19/20 MAJOR MAINTENANCE PROGRAM.

Sponsors:

Indexes:

Code sections:

Attachments: 1. 4. 2019-0500 Attachment A, 2. 4. 2019-0500 Attachment B, 3. 4. 2019-0500 Attachment C, 4. 4. 2019-0500 Attachment D, 5. 4. 2019-0500 Attachment E, 6. 4. 2019-0500 Attachment F, 7. 4. 2019-0500 A Draft Resolution, 8. 4. 2019-0500 B Draft Resolution, 9. 4. 2019-0500 C Draft Resolution

Date	Ver.	Action By	Action	Result
2/11/2020	1	Board of Port Commissioners	adopted as amended	Pass
2/11/2020	1	Board of Port Commissioners	adopted	Pass

DATE: February 11, 2020

SUBJECT:

PAVEMENT IMPROVEMENTS AT SHELTER ISLAND PARKING LOTS PROJECT:

- A. RESOLUTION REJECTING BID PROTEST FROM TC CONSTRUCTION COMPANY, INC. AGAINST MVC ENTERPRISES INC.
- B. RESOLUTION REJECTING BID PROTEST FROM EAGLE PAVING COMPANY, INC. AGAINST TC CONSTRUCTION COMPANY, INC.
- C. RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AWARDED CONTRACT NO. 2019-15 TO MVC ENTERPRISES INC. IN THE AMOUNT OF \$789,700.00 (BID SCHEDULES A AND B) FOR THE PAVEMENT IMPROVEMENTS AT SHELTER ISLAND PARKING LOTS PROJECT, AS AUTHORIZED BY THE BOARD IN THE FY19/20 MAJOR MAINTENANCE PROGRAM.

EXECUTIVE SUMMARY:

The Pavement Improvements at Shelter Island Parking Lots is identified in the District Asset Management Program (AMP) requiring repair and maintenance in FY19/20. Staff recommends that the San Diego Unified Port District (District) Board of Port Commissioners (Board) approve the plans and specifications and authorize the award of a Major Maintenance construction contract to MVC Enterprise Inc. in the amount of \$789,700.00 (Bid Schedules A and B) for the Pavement Improvements at Shelter Island Parking Lots, San Diego, California.

The plans and specifications define the contract work including crack seal, slurry seal and seal coat application on the existing asphalt pavement at parking lots #1A, #1B and #10; replacement of existing asphalt with new 4" asphalt pavement over 10" recycled base at parking lots #2 and #3; and pavement striping and markings at all parking lots (Attachment A-Location Map).

On January 14, 2020, the District received 12 bids ranging from \$789,700.00 to \$1,004,951.08. The responsive bids are listed on Attachment B. The lowest responsive and responsible bid was submitted by MVC Enterprise Inc. (MVC) in the amount of \$789,700.00.

The second lowest bidder, TC Construction Company Inc. (TC), has protested MVC's bid claiming it is non-responsive for failure to meet the Small Business Enterprise (SBE) requirements of the specification (Attachment C). MVC responded to the protest (Attachment D). Staff has reviewed the protest and response and recommends the Board reject the protest.

The third lowest bidder, Eagle Paving Company, Inc., has protested TC's bid claiming it is non-responsive as TC's sub-participant form lists a larger amount of the bid for two subcontractors than is listed in TC's bid amount for the work of these subcontractors. (Attachment E). TC responded that a portion of these subcontractors' work appears in the bid item which includes mobilization, that there were not mistakes in its bid, and that it is responsive (Attachment F). TC has requested the Board determine Eagles' protest is "frivolous" and, under the specification, find Eagle ineligible for future bids. Staff recommends rejecting the protest but not finding the protest frivolous.

Staff recommends that the Board approve the plans and specifications and award Contract No. 2019-15 to MVC Enterprises Inc. in the amount of \$789,700.00 for the Pavement Improvements at Shelter Island Parking Lots project.

RECOMMENDATION:

- A. Adopt a resolution rejecting bid protest from TC Construction, Inc. against MVC Enterprises Inc.
- B. Adopt a resolution rejecting bid protest from Eagle Paving Company, Inc. against TC Construction Company, Inc.
- C. Adopt a resolution approving plans and specifications and awarding Contract No. 2019-15 to MVC Enterprise Inc. in the amount of \$789,700.00 (Bid Schedules A and B) for the construction of the Pavement Improvements at Shelter Island Parking Lots project, as authorized by the Board in the FY19/20 Major Maintenance program.

FISCAL IMPACT:

This project is included in the FY19/20 Major Maintenance Program budget. A budget amount of \$1,000,000 has been allocated in the FY19/20 Major Maintenance program for the project. Approval of this agenda will authorize the expenditure of \$789,700.00 from the Major Maintenance Capital funding appropriation.

COMPASS STRATEGIC GOALS:

Award of this construction contract will implement the Major Maintenance Program, approved by the Board to be in alignment with the District's vision, mission and strategic goals.

This agenda item supports the following Strategic Goal(s).

- A vibrant waterfront destination where residents and visitors converge.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

The scope of this project is to repair the existing asphalt pavement at Parking Lot #2 and #3 and apply the necessary pavement maintenance at Parking Lots #1A, #1B and #10 at Shelter Island, (Attachment A-Location Map). Most of the parking spaces at Parking Lot #1A are metered and all spaces at Parking Lot #1B are metered. Parking Lots #2, #3 and #10 are located adjacent to the Shelter Island Boat Launch and are used for public parking for vehicles and vehicles with boat trailers.

This project is identified in the District Asset Management Program (AMP) requiring repair and maintenance in FY19/20. The cost of repair is included in the FY19/20 Major Maintenance Capital Projects budget.

The contract documents were prepared using an additive bid schedule. This was done in anticipation of the base bid (Bid Schedule A) coming in within the approved budget (\$1,000,000). The work in Bid Schedule B (Additive Bid) was included to allow the District the opportunity to award the bid if the results of Bid Schedule A as shown on the Tabulation of Bids was low enough to award both bid schedules. The results of Bid Schedule A were low enough to allow the award of Bid Schedule B.

The project includes the following work:

- Bid Schedule A
 - Parking Lots #1A and #1B - slurry seal application to the existing 100,000 square feet of asphalt pavement. Other work includes sealing of cracks, pavement striping and markings.
 - Parking Lots #2 and #3 - existing 110,000 square feet of asphalt pavement shall be replaced by a new 4" asphalt pavement over 10" recycled asphalt base (mixture of pulverized existing asphalt and base). Other work includes the removal and disposal of excess material, replacement of concrete cross- gutters, pavement striping and markings.

- Bid Schedule B
 - Parking Lot #10 - seal coat application to the existing 175,000 square feet of asphalt pavement. Other work includes sealing of cracks, pavement striping and markings.

All construction work will be done in phases to provide access to the boat launch at all times, provide parking spaces to the public and minimize loss of parking revenue on metered spaces.

The Contract Documents including plans SI-2019-01 and specifications No. 2019-15 were issued for advertisement on December 11, 2019. On January 14, 2020, 12 bids were received ranging from \$789,700 to \$1,004,951.08. The bid amounts are as shown in the table below.

Tabulation of Bids

Company	Total Bid (Bid Schedule A + Bid Schedule B)	Location
MVC Enterprises Inc.	\$789,700.00	Temecula, California
TC Construction Company, Inc.	\$796,116.00	Santee, California
Eagle Paving Company, Inc.	\$799,472.00	Poway, California
PAL General Engineering Inc.	\$838,482.00	San Diego, California
Portillo Concrete	\$884,665.00	Lemon Grove, California
L.C. Paving & Sealing, Inc.	\$885,019.00	San Marcos, California
Tri-Group Construction & Development	\$886,943.00	San Diego, California
Blue Pacific Engineering & Construction	\$928,950.00	San Diego, California
LB Civil Construction, Inc.	\$944,910.00	Escondido, California
AM Ortega Construction, Inc.	\$980,021.00	Lakeside, California
Hazard Construction	\$987,760.00	San Diego, California
Accurate Asphalt & Concrete Inc.	\$1,004,951.08	Imperial Beach, California

Based on a review of the bids, the lowest responsive and responsible bid was determined to be submitted by MVC Enterprises Inc. at \$789,700.00. The engineer's construction cost estimate was \$900,000. Upon Board authorization, construction is expected to commence in March 2020 and be completed by June 2020.

Protest of MVC's Bid

The second lowest bidder, TC, has protested MVC's bid claiming it is non-responsive for failure to meet the SBE requirements of the specification (Attachment C). The specification set an SBE goal of 4% participation and required bidders to meet this goal or make good faith efforts to achieve such as set forth in the specification. TC claims that MVC's bid fails to satisfy the SBE goal because: 1) MVC's bid did not specify any SBE sub-participants nor address good faith efforts, but MVC only identified an SBE supplier after bids were submitted, and 2) that MVC's SBE supplier, Supply Patriot, does not qualify as a supplier capable of satisfying the SBE goal.

MVC has stated that it has satisfied the SBE requirements by identifying its SBE supplier of Supply Patriot at approximately 5% of the bid which meets the 4% SBE goal and was timely provided under

the terms of the specification which allow identification of an SBE supplier prior to award of contract. Further, MVC has stated that Supply Patriot is, in fact, a regular dealer as defined by the specification which can satisfy the SBE requirement and not simply a broker or packager which would not (Attachment D).

While the specifications for 2019-15 states, in part, that SBE participation or good faith efforts documentation must be submitted with the original Bid Proposal Package, it also allowed for certain SBE participation information to be provided prior to the award of the Contract. The latter language allows for the identification of suppliers and/or truckers which are not required to be listed at the time bids are submitted pursuant to the California Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100). MVC would not be allowed to submit any additional information regarding subcontractors that would be performing more than one-half of one percent of the total contract amount. Therefore, under the specification, Staff believes the post-bid identification of Supply Patriot as an SBE supplier meets the SBE goal.

It should be noted that Staff is considering amending the language in future specifications to make more clear when such SBE information is due. However, under the terms of this specification, Staff finds that MVC is in compliance.

Further, regarding TC's claim that Supply Patriot is not a supplier which can qualify under the specification, but simply a dealer, Staff consulted the System for Award Management and the Small Business Administration systems and confirmed Supply Patriot is listed as construction material merchant wholesaler rather than simply a dealer. Based on this and the information in MVC's response, Staff finds that Supply Patriot is a regular dealer and MVC has satisfied the SBE goal requirement of the specification.

Protest of TC's Bid

The third lowest bidder, Eagle Paving Company, Inc., has protested TC's bid claiming it is non-responsive as TC's sub-participant form lists a larger amount of the bid for two subcontractors than is listed in TC's bid amount for the work of these subcontractors (Attachment E). TC responded that a portion of these subcontractors' work appears in the bid item which includes mobilization, that there were not mistakes in its bid, and that it is responsive (Attachment F). TC has requested the Board determine Eagles' protest as "frivolous" and, under the specification, declare Eagle Paving ineligible for future bids. Staff recommends rejecting the protest but not finding the protest frivolous.

Conclusion

Staff recommends that the Board reject the protest from TC Construction Company, Inc. and the protest from Eagle Paving Company, Inc., and approve the plans and specifications and award Contract No. 2019-15 to MVC Enterprises Inc. in the amount of \$789,700.00 for the Pavement Improvements at Shelter Island Parking Lots project.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approved this agenda as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, restriping and slurry sealing of existing parking lots at Shelter Island, is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301 (Existing Facilities) and 15304 (Minor Alterations to Land) and Sections 3.a. and 3.d. of the District's *Guidelines for Compliance with CEQA* because the project would consist of slurry-sealing and restriping existing parking lots and would involve a negligible expansion of use beyond that previously existing, would not result in a significant cumulative impact due to the continuation of the existing use, would result in no permanent effects on the environment, and would not involve the removal of mature, scenic trees. A CEQA Exemption was previously issued for this project on January 8, 2020. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). Pursuant to Section 15378(c) of the State CEQA Guidelines, the term "project" refers to the activity being approved, which may be subject to several discretionary approvals of governmental agencies and does not mean each separate governmental approval. Accordingly, the proposed Board action is a subsequent discretionary approval of a previously approved project. No further action under CEQA is required.

In addition, the proposed Board action complies with sections 21, 35, and 87 of the Port Act, which allow the Board to pass resolutions; to do all acts necessary and convenient for the exercise of its powers; and for the construction, reconstruction, repair, and maintenance of highways, streets, roadways, bridges, belt line railroads, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary, or convenient for the promotion and accommodation of any of the uses set forth in this section. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board direction or action is consistent with the Public Trust Doctrine.

The proposed Board action is considered "excluded development" pursuant to Sections 8.a (Existing Facilities) and 8.d. (Minor Alterations to Land) of the District's Coastal Development Permit Regulations because the project would consist of slurry-sealing and restriping existing parking lots and would involve a negligible expansion of use beyond that previously existing, would not result in a significant cumulative impact due to the continuation of the existing use, would result in no permanent effects on the environment, and would not involve the removal of mature, scenic trees. A "Coastal Act Categorical Determination of Exclusion" was previously issued for this project on January 8, 2020, therefore, issuance of a Coastal Development Permit or subsequent Exclusion is not required for the proposed Board action.

Equal Opportunity Program:

A 4% SBE goal was established for this contract opportunity. MVC identified 5% SBE participation for this contract.

PREPARED BY:

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Office of the General Counsel

Attachment(s):

Attachment A:	Location Map
Attachment B:	Bid Tabulation
Attachment C	TC's Bid Protest to MVC
Attachment D	MVC's Response to TC's Bid Protest
Attachment E	Eagle Paving Company Bid Protest to TC
Attachment F	TC's Response to Eagle Paving Company's Bid Protest